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A QUARTERLY REVIEW OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL ISSUE

*Report of the High Commissioner
for Human Rights, Mary Robinson,
to the Economic and Social Council*

DOSSIER SPECIAL

*Rapport du Haut Commissaire
aux Droits de l'Homme, Mary Robinson
au Conseil Economique et Social*

HUMAN RIGHTS COMMISSION

Summary of the 55 th Session

COMMISSION DES DROITS DE L'HOMME

Compte rendu de la 55ieme Session

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(Georgia)*

ACT project

Population transfers

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Projet ACT

Transferts de Populations



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Droits de l'homme

REVUE TRIMESTRIELLE DU HAUT COMMISSARIAT DES NATIONS UNIES AUX DROITS DE L'HOMME

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EDITORIAL

Economic, social and cultural rights are still the poor relations of civil and political rights. That is the conclusion one inescapably reaches when looking over the half century since the adoption of the Universal Declaration of Human Rights. The Declaration laid down in 1948 that all human rights -- civil, political, economic, social and cultural -- are interlinked and interdependent, and this was reaffirmed in 1993 at the World Conference on Human Rights. Yet, despite some progress in reinforcing the founding vision of the Declaration's drafters, it is manifest that the fundamental rights to decent living conditions, food, basic health care and education are widely denied.

The realization, or lack thereof, of economic, social and cultural rights was the subject of my report to this year's session of the Economic and Social Council which met in Geneva in July. The report focuses exclusively on economic, social and cultural rights in an attempt to redress, at least conceptually, the imbalance between those rights and civil and political liberties. The report is highlighted in this issue of Human Rights. It confirms that progress is being made in establishing and strengthening the mechanisms to promote and protect economic, social and cultural rights. Unfortunately, results thus far achieved have not had a significant impact on the lives of ordinary citizens. At the dawn of a new century, violations of economic, social and cultural rights must be seen as an affront to human dignity. Equally important, their implementation must be understood as an essential part of building a national economic and social order based on security, freedom and equality.

This issue also provides a report on the 55th session of the Commission on Human Rights. The session addressed a wide range of issues - from extreme poverty to the human rights situation in Sierra Leone. Others issues to which the Commission accorded a high priority included the preparation of the World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance, scheduled for 2001; and the marginalization and exclusion to which



children continue to be subjected.

OHCHR's work in the field is presented in an article on the activities of the Office in Abkhazia (Georgia).

An update on the ACT Project is included. This new initiative, jointly sponsored by the Office of the High Commissioner for Human Rights and the United Nations Development Programme, was launched in 1998 as a practical contribution to the commemoration of the fiftieth anniversary of the Universal declaration of Human Rights.

This issue also includes an article which focuses on population transfers and serves as a reminder that "ethnic cleansing" is not a new phenomenon.

Two other activities in this issue are exhibits and events. These are initiatives which should make the public more aware of the work being done to promote and protect human rights.

A handwritten signature in cursive script that reads "Mary Robinson".

Mary Robinson

High Commissioner
for Human Rights

Report of the High Commissioner for Human Rights

ECOSOC, 25 June 1999

E/1999/ECN/21

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I. INTRODUCTION

The present report is submitted pursuant to General Assembly resolution 48/141. Its content focuses on the implementation of economic, social and cultural rights. In 1993, the World Conference on Human Rights urged that the enjoyment of these rights be strengthened and recommended a concerted effort to ensure their recognition at national, regional and international levels. Two years later, at the World Summit for Social Development, States pledged to strive for social integration based on the enhancement and protection of all human rights. Since assuming her duties, the High Commissioner for Human Rights has stressed that one of her main objectives is to build on these commitments.

2. The commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights provided the ideal opportunity to look with a heightened awareness at the Declaration's vision of the inherent dignity and equal and inalienable rights of all members of the human family. The Vienna Declaration and Programme of Action forcefully reiterated that all human rights - civil, cultural, economic, political and social are interlinked and interdependent. With the benefit of fifty years of experience, it has become clearer that all human rights must be respected with the same degree of affirmation and conviction - freedom of speech and belief as well as freedom from fear and want; fair trial and the right of participatory and representative government side by side with the rights to work, to health protection, and to education.

3. Some progress has been made both at international and national levels in reinforcing the founding vision of the drafters of the Universal Declaration enshrined in its Article 22, which proclaims: "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization

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and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality". Examples of efforts by the international community can be seen in the resolutions and new mandates of the Commission on Human Rights; further clarification by treaty-monitoring bodies of the content of specific rights; and enhanced activities by components of the United Nations system as well as other international organizations to improve the realization of human rights in the lives of people.

4. Yet despite examples of progress, it is manifest that the fundamental rights to decent living conditions, to food, to basic health care and to education as laid down in the International Covenant on Economic, Social and Cultural Rights, are being denied on a massive scale. We need look no further than recent United Nations data to confirm this. UNICEF's 1999 State of the World's Children report warns that nearly a billion people, a sixth of humanity, are functionally illiterate and will enter the 21st century unable to read a book or sign their names. Two thirds of them are women. The 1998 Annual Report of the Executive Director of WFP states that while there is sufficient food to feed the world, 830 million people are chronically undernourished. We live in a world where food rots while people starve. And the 1998 UNDP Human Development Report points out the bleak reality that of the 4.4 billion people in developing countries, nearly three fifths lack basic sanitation, almost a third have no access to clean water, a quarter do not have

adequate housing, a fifth have no access to modern health services, a fifth of children do not attend school to grade 5, and approximately a fifth do not have an adequate amount of energy-producing foods and protein in the diet.

5. One area of particular urgency is the eradication of extreme poverty. The latest report of the World Bank indicates that the recent financial and economic crisis has driven large parts of populations into poverty - measured by the World Bank as income of less than US\$ 1 per day. The victims of poverty are in fact denied almost all rights - not only to adequate food, health care and housing but also to participation in the political process; access to information and education; fair legal treatment and the normal benefits of citizenship. These conditions are compounded for the most vulnerable, particularly children and women who, in some parts of the world, are being increasingly exploited through trafficking, forced labour, and prostitution. The Bank's report speaks about the failure of existing economic strategies to combat poverty and calls for new, socially-oriented approaches.

6. The globalization of markets, capital, communication and technology changes the face of the world, opening up new opportunities and creating new challenges. While the benefits of this transformation are undeniable for millions of people in all regions, it is also undeniable that still larger numbers of the world's population are being pushed to the margins of society - economically and socially



Efforts by the International Community can be seen in the resolutions and new mandates of the Commission on Human Rights

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- in part because of this complex process. In developing and developed countries alike, a clear trend towards a smaller percentage of the population receiving a greater share of wealth, while the poorest simultaneously lose ground, must be addressed. Effective action to combat poverty and to make the global system work for all people involves difficult decisions by Governments faced with competing economic and social priorities and by the international community which must make appropriate use of the limited resources at its disposal. Yet these decisions can and must be made by placing the decision-making process firmly in the context of international human rights obligations.

7. Undoubtedly, large-scale efforts at all levels are still required to remove the obstacles and bolster the commitment and resources dedicated to ensuring the realization of ESC rights. 1999 marks the tenth anniversary of the adoption of the Convention on the Rights of the Child and provides a fitting occasion to focus world attention on the difficulties children face throughout the world. The international community should join UNICEF, the Committee on the Rights of the Child and all other institutions involved not only to give children a ray of hope but to ensure respect for their legitimate rights. Targeted thinking and action to broaden access to education, health protection and a social environment conducive to sustainable human development must be seen as common goals to be achieved for the sake of all children.

8. This report provides an overview of important recent developments in the implementation of ESC rights at international level. The Economic and Social Council, benefiting from the activities carried out under its authority, including the Commission on Human Rights and the Committee on Economic, Social and Cultural Rights, may wish to consider the possibility of carrying out a review of developments at national level to promote best practices, identify needs and strengthen cooperation between Governments and human rights and development institutions, as well as other relevant actors. OHCHR will do its utmost to support such endeavours and facilitate Governments' ability to promote and protect ESC rights.

II. ENHANCING COMMITMENTS TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Ratifications

9. Progress in the implementation of human rights is largely dependent upon the status of legal commitments made by States regarding observance of, and respect for international standards. Since the World Conference in 1993, the number of States which have ratified the ICESCR has increased by 17 percent reaching a total of 141 States parties. These recent ratifications of the Covenant are important steps for ensuring that national legislation is consistent with the Covenant's provisions. It must be noted, however, that more than one quarter of all countries have not ratified the Covenant. In the context of the fiftieth anniversary of the Universal Declaration of Human Rights, the Secretary-General and the High Commissioner sent joint letters to all heads of State urging them to make every effort to ratify the two Covenants and the four principal human rights conventions within the next five years. United Nations technical assistance and advice concerning the ratification process is available to requesting countries.

10. In conjunction with the ICESCR, other human rights treaties play an important role, either directly or indirectly, in determining the commitment of States. The Convention on the Rights of the Child includes provisions for the protection of the full spectrum of human rights - civil and political as well as economic, social and cultural. The Convention's near universal acceptance highlights the fact that some ESC rights have already taken the form of legal entitlements for more than half of the world's citizens - its children. States which have ratified the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Elimination of All Forms of Discrimination against Women, both of which include express references to a number of specific ESC rights, have also entered into legal obligations to implement these rights. Only 12 countries have not yet ratified either of these two treaties. This shows that the net of international legal commitments relevant for ESC rights is wider than would be assumed on the sole basis of the number of ratifications of the ICESCR.

11. Past experience also confirms that commitment to only one category of human rights sooner or later becomes a serious obstacle to the implementation of

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all human rights, and thus to sustainable human development. This is *mutatis mutandis* the case in all countries, developed and developing. The complementarity between civil and political rights and ESC rights must be fully recognized if the latter are to be implemented in accordance with the needs of people and the actual economic potential of the State. The call for ratification of human rights treaties addressing ESC rights directly should, therefore, be linked to the call for ratification of other treaties.

Content of obligations

12. The views of the Committee on Economic, Social and Cultural Rights, articulated in its General Comments, contribute to clarification of the content of specific rights and the conditions necessary for their implementation, thus further specifying the commitments of States parties under the ICESCR. During its 19th session, held in May of this year, the Committee considered and adopted: General Comment No.11 "Plans of Action for Primary Education (Article 14 of the Covenant)" and General Comment No.12 "The Right to Adequate Food (Article 11 of the Covenant)".¹ The first of these Comments emphasized the importance of national

plans of action for primary education and requested States parties which have not been able to secure compulsory primary education free of charge, to work out and adopt, within two years, a detailed plan of action leading to this goal. The second General Comment affirmed that the right to adequate food was indivisibly and indispensably linked to the inherent dignity of the human person and was inseparable from the fulfilment of other rights enshrined in the International Bill of Human Rights. The Committee also stressed that the roots of hunger and malnutrition were due not to lack of food globally but to lack of access to available food and stated that violation of the Covenant occurred when a State failed to ensure the satisfaction of the minimum essential level required to be free from hunger.

13. Other treaty-based bodies also look beyond the formal content of standards laid down in the respective treaties in order to analyze the social and economic premises of their implementation. For example, in commenting on the right to life, the Human Rights Committee has referred to problems such as malnutrition and epidemics which link this right to the right to food and the right to health under the ICESCR.² The Committee on the Rights of the Child has helped identify the close relationship

Mary Robinson



between the realization of the rights of the child and the eradication of situations of economic exploitation. The Committee attached particular importance to education which reduces a child's vulnerability to all forms of exploitation. While interpreting the commitments of States under the respective treaties as obligations to respect, protect and fulfill human rights, the treaty bodies call for a pro-active policy by the State regarding the implementation of human rights, including appropriate assistance to the individual.

Thus, not only is the content of commitments undertaken by States in social and economic areas becoming more clearly defined, but the links between different categories of human rights are being increasingly strengthened. The treaty bodies attach great deal of importance to the commitment of States to cooperate in promoting and protecting human rights. For example, the Committee on Economic, Social and Cultural Rights has stressed that States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the realization of ESC rights. (See also paras 33-34).

Declaration on the Right to Development

14. Resolutions of the United Nations intergovernmental bodies also play an important role in defining the responsibilities of States in the area of ESC rights. The role of the 1986 Declaration on the Right to Development is a pivotal one. By placing the individual at the centre of development activities and proclaiming an integrated vision of all human rights, the Declaration is a vehicle for the indivisibility and complementarity of different categories of human rights and for recognizing the promotion and protection of all human rights as the basis and measure of sustainable development. As a consequence, this Declaration has given fresh impetus to the furtherance of ESC rights.

III. STRENGTHENING THE IMPLEMENTATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Determining needs

15. An objective and impartial picture of the worldwide implementation of ESC rights is of great importance. This is indispensable for identifying needs and emergent threats, extrapolating trends in the implementation of human rights at all levels and,

on this basis, for determining priority areas and methods of work. For the United Nations, it provides the basis for the appropriate orientation of policies and activities, particularly in the context of confidence-building and technical cooperation at national level. The Committee on Economic, Social and Cultural Rights stressed that "the essential first step towards promoting the realization of economic, social and cultural rights is diagnosis and knowledge of the existing situation.

While monitoring is designed to give a detailed overview of the existing situation, the principal value of such an overview is to provide the basis for the elaboration of clearly stated and carefully targeted policies, including the establishment of priorities which reflect the provisions of the Covenant."³

16. The indivisibility of human rights requires that methods for tracking the implementation of ESC rights in particular should be strengthened. Currently, such methodologies are less effective than those developed for civil and political rights although social and economic data from development agencies are increasingly being incorporated into the relevant analysis. At international level, progress can be achieved *inter alia* by: a) ensuring the adequate standing of ESC rights in the work of the intergovernmental bodies of the United Nations, the Commission on Human Rights in particular; b) integrating ESC rights throughout the human rights machinery; c) strengthening the capacities for supporting the Committee on Economic, Social and Cultural Rights; d) enabling the mechanism established by the Commission on Human Rights to assess the implementation of the right to development; e) adopting an Optional Protocol on individual communications to the ICESCR; and f) applying methodological approaches for more effective assessment, including the development of indicators and benchmarks relevant to ESC rights.

Intergovernmental bodies

17. Placing ESC rights on the agendas of United Nations organs and bodies, as well as on those of agencies and programmes, is essential in order to map the existing needs in their global, regional and national dimensions. The High Commissioner has proposed joint meetings of the Second and Third Committees of the General Assembly to consider various aspects of ESC rights. During the fifty-third session of the General Assembly, both Committees came together to discuss the role the UN should play in eradicating poverty. ECOSOC has dedicated its 1999 high-level segment to poverty eradication. At

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ECOSOC in session - meeting room

its fifty-fifth session, the Commission on Human Rights held a special dialogue which focused on the problem of the social exclusion of children. In addition, other ECOSOC subsidiary bodies place emphasis on areas relevant to the implementation of ESC rights. For example, the last session of the Commission for Social Development -the thirty-seventh- while focussing in its Agreed Conclusions on social services, stressed that "Investment in social services will contribute to poverty eradication, peace, equity and equality, social progress and cohesion, economic productivity, productive employment, and full participation of all people in society. In this respect, it is of fundamental importance that Governments either provide social services or ensure universal and equitable access to social services - especially, in times of economic recession."⁴

18. The Commission on Human Rights has taken significant steps in recent sessions to enhance the implementation capacity of the United Nations human rights programme with regard to ESC rights. In 1998, the Commission established the Special Rapporteur on the Right to Education (her initial report was presented to the fifty-fifth session of the Commission).⁵ Mandates dealing with the social and economic aspects of development are also of great relevance to ESC rights and include an Independent Expert on the right to development; an Independent Expert on extreme poverty; a Special Rapporteur on the effects of foreign debt on the full enjoyment of

ESC rights; an Independent Expert on the effects of structural adjustment policies on the full enjoyment of human rights; a Special Rapporteur on sale of children, child prostitution and child pornography; a Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights; a Working Group on the right to development; and a Working Group on contemporary forms of slavery. It is essential that all holders of special procedures mandates include in their analyses the possible impact of ESC rights on their primary area of interest.

19. In its resolution 1998/72, the Commission on Human Rights established a new mechanism to monitor the implementation of the right to development. It includes the aforementioned open-ended inter-sessional Working Group and an Independent Expert. The mandate of the Expert is to study the current state of progress in the implementation of the right to development and present these findings to the Working Group at each of its meetings. This mechanism can be seen as an additional important instrument following the implementation of ESC rights since the right to development encompasses an integrated approach to all human rights. The Working Group will meet for the first time in September 1999.

20. The Sub-Commission for the Promotion and Protection of Human Rights (formerly the Sub-Commission for the Prevention of Discrimination and Protection of Minorities) has been involved in studies carried out to assist in implementing ESC rights. These include a study on the right to adequate food (recently revised and updated), impunity of perpetrators of violations of ESC rights, human rights indicators, human rights and income distribution and the right to education. The Sub-Commission is also reviewing the establishment of a forum on ESC rights. The proposed "Social Forum" would meet during the annual session of the Sub-Commission for the purpose of exchanging information on the enjoyment of ESC rights; following up on situations of poverty, including the relationship between income distribution, the feminization of poverty and human rights; and elaborating possible guidelines on violations of ESC rights.

Treaty bodies

21. Between its establishment in 1985 and January 1999, the Committee on Economic, Social and Cultural Rights has considered 155 initial and 74 periodic reports as well as 60 global reports and has developed comprehensive guidelines for this process.⁶ The Committee also explores new methods of work. Its first country missions focused on the realization of the right to adequate housing.⁷ General debates involving experts, representatives of agencies and programmes as well as special rapporteurs are now scheduled for each session of the Committee. These

debates support the Committee's efforts to define more clearly the content of ESC rights and elaborate more effective methods for their implementation. The Committee's most recent general debates focused on the right to education and the right to food.

22. The expertise of the Committee, based on its systematic review of the implementation of the rights laid down in the Covenant and the input from national and international partners, makes it a unique body both within the United Nations system and the international community. The 1995 World Summit for Social Development recognized that the Committee on Economic, Social and Cultural Rights should play an important role in following those aspects of the Declaration and Programme of Action relative to compliance, by States parties, with the ICESCR. However, the impact of the Committee is, to a large extent, determined by the resources at its disposal. At its last session, the Committee referred to the substantial backlog of reports and stressed that, in the framework of existing arrangements regarding its sessions, three years would be needed to clear it.⁸ OHCHR has taken steps to ensure better support to the Committee, more particularly under the Plan of Action for Strengthening the Implementation of the International Covenant on Economic, Social and Cultural Rights adopted by the Committee at its 15th session.⁹ The Plan has been designed to provide support for the reporting process and enhance analytical capacities thereby enabling the Committee to make full use of available information, liaise with

The High Commissioner attends ECOSOC meeting



other relevant agencies, identify and analyze emergent trends and prepare research and background material for elaborating policy positions on key issues which the Committee must address. Further steps, such as increasing the frequency of the Committee's sessions should, however, also be considered.

23. Although the Committee on Economic, Social and Cultural Rights maintains the central position in monitoring the implementation of these rights, other treaty bodies can and do contribute to this process by paying particular attention to the ESC rights of specific groups or in specific situations, as well as by analyzing the economic, social, and cultural aspects of the realization of other rights. Cooperation between the treaty bodies on the one hand, and with the holders of special procedures mandates on the other, is also of great importance. The annual meetings of the chairpersons of the treaty bodies and of special procedures include the implementation of ESC rights on their respective agendas. In May 1999, these meetings coincided for the first time. The chairpersons strongly supported the idea of a workshop to develop on indicators and benchmarks for measuring the implementation of the right to education (see also para 25).

24. The individual communications procedure - an important mechanism under some human rights treaties - is not provided for under the ICESCR. Although the primary purpose of this procedure is to extend international protection to individuals, such communications also shed light on the general human rights situation in a given country. The World Conference on Human Rights encouraged the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the ICESCR.¹⁰ After a series of debates, the Committee submitted a draft optional protocol on individual communications to the Commission on Human Rights, which forwarded it to Governments for comment. To date, very few Governments have presented their views. The acceleration of this process is essential.¹¹

New methodological approaches

25. The World Conference on Human Rights recommended the examination of a system of indicators to measure progress in the realization of the rights set forth in the ICESCR as being pivotal to efforts for strengthening the enjoyment of these rights.¹² The integration of human rights, including ESC rights, into the global set of Common Country Assessment indicators is an important component of the United Nations Development Assistance Framework

(UNDAF) which will lead to practical integration of human rights United Nations coordinated projects most responsive to the needs of States.¹³ OHCHR is participating in this process. During its fifty-fifth session, the Commission on Human Rights adopted resolution 1999/25 regarding the organization of a workshop by the OHCHR to identify progressive developmental benchmarks and indicators related to the right to education. The OHCHR is currently organizing the workshop, and the Committee on Economic, Social and Cultural Rights is cooperating in this activity. Other treaty bodies, specialized agencies and experts in the field will be requested to participate.

26. At its fifty-fifth session, the Commission on Human Rights reiterated its call upon all States "to consider ... the desirability of drawing up national action plans identifying steps to improve the situation of human rights in general with specific benchmarks designed to give effect to the minimum essential levels of enjoyment of economic, social and cultural rights".¹⁴ The Committee on Economic Social and Cultural Rights pointed out that whilst global benchmarks are of limited use in many areas - the reduction of infant mortality, the extent of vaccination of children, the intake of calories per person, the number of persons per health-care provider, etc. - national or other more specific benchmarks can provide a valuable indication of progress.¹⁵ In order to avoid too flexible an interpretation of the State party's obligation under the Covenant, the Committee combined the progressive realization of ESC rights with the concept of a minimum core obligation.¹⁶ With a view to exploring further the application of benchmarks in the area of ESC rights, OHCHR organized a round table in March 1998 which brought together leading academics and practitioners and was attended by a large number of representatives of Governments and NGO's. The work on benchmarks is ongoing, involving, *inter alia*, their applicability at regional/sub-regional level.

27. Non-governmental organizations and civil society are increasingly involved in monitoring social and economic developments as well. The academic community has assisted the UN human rights machinery by, *inter alia*, developing two sets of guidelines known as the "Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights" (1987) and developed, in 1997, in the "Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

IV. ASSISTING STATES IN THE IMPLEMENTATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

28. A recent system-wide survey of United Nations technical cooperation programmes in the field of human rights carried out by OHCHR shows that ESC rights are increasingly being recognized as the basis for a wide range of United Nations activities. FAO, HABITAT, UNESCO, WHO and other agencies and programmes which are active in areas as diverse as food, housing, education, health, and culture are increasingly referring to ESC rights as a set of standards which determine the framework of assistance offered to countries. This contributes to more individually focused and consistent orientation for technical cooperation programmes, as well as facilitating inter-agency cooperation in assistance to Member States. UNDP, in cooperation with OHCHR, has developed a joint programme for 'Human Rights Strengthening' (HURIST) which includes the promotion of a human rights approach to sustainable human development, particularly in the following areas: eradication of poverty, gender issues, the environment, water and sustainable livelihoods; promoting the ratification of core human rights instruments; advancing the global dialogue on the impact of globalization on the enjoyment of human rights; and assistance to countries seeking to develop their capacity to promote human rights.

29. OHCHR is carrying out a special project to integrate ESC rights into all aspects of technical cooperation practices and procedures as recommended by the Committee on Economic, Social and Cultural Rights.¹⁷ In March 1998, the implementation of the project was reviewed by a Technical Working Group of experts which proposed, among other things, that the programme include training and other educational/sensitization initiatives for 'non-traditional' target audiences such as government officials involved in providing basic services (e.g. water and education) and setting benchmarks relating to the percentage of resources to be devoted to ESC rights. Implementation of these recommendations is an ongoing OHCHR task. Training programmes to develop in-house expertise in incorporating ESC rights into technical cooperation projects are to be carried out throughout 1999 and 2000. OHCHR is also including ESC rights in manuals and methodological material for its technical cooperation programme and field activities. For example, guidelines for interviews, recently prepared for the Kosovo emergency operation and shared with the partners involved in the field, refer to both ESC and civil and political rights.

30. Independent national human rights institutions, acting in accordance with the *Paris Principles*, play an important role in the realization of ESC rights at national level as emphasized by the Committee on Economic, Social and Cultural Rights in its General Comment No. 10. The Committee pointed out that such institutions were in many cases already undertaking educational and information programmes, scrutinizing existing laws, identifying national-level benchmarks, conducting research and inquiries, monitoring compliance with human rights standards and examining complaints about their violations. OHCHR accords priority to the establishment and strengthening of national institutions in all regions. A Handbook on Economic and Social Rights for National Human Rights Commissions is under preparation: it is intended to assist in integrating ESC rights into their activities and programmes. In addition, OHCHR is also organizing and co-sponsoring a number of regionally based training initiatives on ESC rights focusing specifically on national human rights institutions. The Coordinating Committee on National Institutions at its last meeting (April 1999) discussed, *inter alia*, issues of poverty, homelessness and its consequences, mental illness, indigenous rights, and policies necessary to ensure equal opportunity for women.

31. The third Annual Meeting of the Asia-Pacific Forum for National Human Rights Institutions (September 1998, Indonesia) considered the effects of the recent economic crisis on ESC rights and called on all Governments to give explicit effect to their commitment to the indivisibility of human rights, including their input into the policies and actions of international financial institutions and of international and regional economic forums such as the WTO and the Asia-Pacific Economic Cooperation Council. A workshop (May 1999, the Philippines), co-sponsored by OHCHR, discussed problems attendant on integrating ESC rights into the work of national human rights commissions.

32. On the occasion of the 50th Anniversary of the Universal Declaration of Human Rights, OHCHR initiated the *ACT (Assisting Communities Together) Project* which was implemented jointly by OHCHR and UNDP and supported by Governments. In the framework of this project, micro-grants have been offered to local human rights initiatives. Many of these projects come within the purview of ESC rights. The encouraging results from initiatives supported during the first phase of the *ACT Project* have led to the continuation of the Project under the UNF/UNFIP umbrella.

V. BUILDING PARTNERSHIPS

International cooperation

33. Following the commitments made under the United Nations Charter, the Universal Declaration of Human Rights provided the foundation for international cooperation in the field of human rights by stating that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." (UDHR, Art. 28). Both the ICESCR and the Declaration on the Right to Development reaffirmed this principle.

34. The world conferences and summits held during the 1990s reiterated the will of the international community to develop cooperation in the field of human rights. While each State has primary responsibility for ensuring the realization of all human rights at national level, the international community should respond to the needs of States for assistance. The 1993 World Conference on Human Rights stressed this in Part I, para. 1 by stating that enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations. In Commitment No.1 of the 1995 Social Summit, Governments pledged cooperative efforts to create an environment of policy, law and administration which would enable the realization of all human rights. The final documents of world conferences and summits also

provide important guidance for the implementation of ESC rights. The framework for the coordinated follow-up to the world conferences and summits, developed under the authority of ECOSOC, provides an operational tool for further integrating these rights into United Nations system-wide activities. It is vital that the review of the implementation of the recommendations adopted by the United Nations world conferences and summits should also be used to focus on the policies and programmes developed to give effect to ESC rights.

Integrating ESC rights throughout the United Nations system

35. The Secretary-General's reform programme which reaffirmed human rights as a cross-cutting issue within the United Nations system has contributed to enhanced efforts in the area of ESC rights. By placing human rights on the agenda of all the most important management structures of the United Nations, the entire system is now better able to provide substantive support to their implementation. ECOSOC Agreed Conclusions 1998/2 highlighted the need for interagency cooperation in promoting ESC rights. The reports of the Secretary-General to the substantive sessions of ECOSOC in 1998 and 1999, concerning the implementation of VDPA and Agreed Conclusions, present a review of this process.¹⁸

36. The rights-based approach as expressed in the



ACT Project in South Africa - Meridian High floor team members during the Second round of the debate on "Human Rights are best protected within a democratic government"

Declaration on the Right to Development is increasingly looked to as the basis upon which an enabling international environment can be assured. United Nations agencies and programmes are recognizing that international human rights standards provide precise and firm criteria for policy-making and action, based on recognition of the entitlements of rights-holders and the corresponding accountability of duty-bearers. It is a widely shared view that a rights-based approach applied to the development area ensures sustainability, as well as equitable participation in and enjoyment of development. For instance, in the debate on the recent economic crisis, it was often noted that, negative consequences of the crisis on people could have been reduced, if not avoided, had a human rights approach been fully considered at the time. OHCHR is committed to working closely with all partners to provide substantive input to the integration of human rights into socio-economic policies and actions.

37. The issue of fundamental importance for ESC rights is, *inter alia*, the eradication of poverty. Agreed Conclusions adopted by ECOSOC in 1996 provided guidance to system-wide anti-poverty efforts.¹⁹ The Administrative Committee on Coordination adopted, in 1998, the Statement for Action to Eradicate Poverty as a key international commitment and a central objective of the United Nations system. The ACC emphasized that poverty is a denial of choices and opportunities, as well as a violation of human dignity. UNDP, the World Bank, UNCTAD, UNICEF and other agencies and programmes have developed programmes for its elimination. The Independent Expert on extreme poverty submitted her first report to the last session of the Commission on Human Rights in which she recommended, *inter alia*, domestic legislation for a guaranteed minimum income and 0.7 per cent of national budgets dedicated to official development assistance.²⁰

38. The United Nations Development Group, as the main United Nations policy and coordination structure in the field of development, has become one of the major platforms for promoting the implementation of ESC rights. OHCHR chairs the undg ad hoc Group on the Right to Development which is *inter alia* elaborating a United Nations approach for enhancing the human rights dimension to development activities and a training programme for United Nations staff on the right to development and its implications for sustainable development. The UN Development Assistance Framework, which has been designed to provide the format for continuing United Nations teamwork in responding to the development

priorities of specific countries, will play an essential role in identifying needs regarding the implementation of ESC rights and providing coordinated response to them. OHCHR has prepared the human rights portion of the draft ACC Guidelines for Resident Coordinators in support of this process.

39. In 1998, two important documents integrating human rights with development were published. UNDP issued a policy paper "Integrating Human Rights with Sustainable Human Development" and the World Bank published "Development and Human Rights: The role of the World Bank". Both documents deal with the human rights dimension of the activities of the respective organizations, more specifically in the areas of poverty, human resources, governance, and the rule of law. The intensive contacts which followed between the two institutions and OHCHR, indicate that an integrated approach to human rights and economic and social development is becoming a reality. Cooperation between OHCHR and UNDP led to the signing of a Memorandum of Understanding in 1998 (see also para. 29). In December 1998, the High Commissioner visited the World Bank to discuss modalities of cooperation. Representatives of the World Bank participate in the work of the Commission on Human Rights and some of its working groups, in addition to maintaining working relations with OHCHR.

40. Within the framework of implementing the recommendations of the World Food Summit (Rome 1996), OHCHR has cooperated with FAO and WFP, as well as non-governmental organizations²¹ and experts on the determination of the content of the right to food and the implementation of this right. An expert consultation was organized by OHCHR and FAO to discuss the core content of the right to food (November 1998, Rome). FAO has also issued publications focusing on this right. OHCHR hosted a meeting of the ACC Sub-Committee on Nutrition (April 1999, Geneva) and, in cooperation with the Sub-Committee, organized a symposium on the "Human Rights Approach to Food and Nutrition Policies and Programmes."²²

41. In March 1999, an expert group meeting on practical aspects of the human right to adequate housing was jointly organized by Habitat and OHCHR in Geneva. The participants identified areas which require the urgent attention of the international community and recommended, *inter alia*, the appointment of a Special Rapporteur on Housing Rights and the adoption of Comprehensive Human Rights Guidelines on Development-Based Displace-

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Cooperation with civil society – support to Cambodian NGOs for International Children Rights Day in 1995 at the Cambodian Centre for the protection of children's rights



ment. Treaty bodies such as the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination Against Women were encouraged to draft new general recommendations dealing with housing rights. It was also agreed that Habitat and OHCHR would develop a pilot programme on the right to housing within one of the existing human rights field presences.

42. Cooperation between UNAIDS and OHCHR on the health aspects of development has included dissemination of the International Guidelines on HIV/AIDS and Human Rights; review and reform of criminal laws and correctional systems from the point of view of the protection of the rights of people affected by HIV/AIDS, carried out by UNDP and the Office for Drug Control and Crime Prevention; and the integration of the guidelines into the policies and activities of the United Nations bodies and programmes. Inter-agency cooperation and coordination is on-going under the leadership of UNAIDS. UNDP is also involved in this area in the context of national capacity-building.²³

Regional cooperation

43. A number of examples illustrate the extensive efforts which have been made to promote and protect ESC rights at regional level. This is best exemplified by the system for the protection of these rights under the European Social Charter which has also adopted a system for collective complaints. An Additional Protocol to the American Convention on Human Rights ("Protocol of San Salvador") lays down all the fundamental ESC rights. By virtue of this Protocol,

the right to organize trade unions and the right to education are subject to individual petitions. In adopting the African Charter on Human and Peoples' Rights, the Organization of African Unity integrated ESC rights into a single document with civil and political rights. The 1990 Cairo Declaration on Human Rights in Islam also combines references to both categories of rights.

44. Regional, sub-regional and national human rights activities are essential because they draw upon the understanding of people on the ground regarding priority issues to be addressed and how they may be tackled. Regional cooperation should also help to fill the capacity gap caused by the growing interest of countries in international assistance and the limited resources of individual institutions, including OHCHR, for responding to this interest. While further developing close cooperation with regional human rights organizations, OHCHR intends to intensify its programme of cooperation at the regional/sub-regional level, a significant portion of which will focus on ESC. The experience gained in the SADC region and with the Asia-Pacific regional workshops, particularly the 1998 Teheran and 1999 New Delhi meetings, have clearly demonstrated that this approach can enhance the effectiveness of United Nations efforts to promote and protect human rights and ensure more efficient utilization of available resources. Enquiries and information from all regions indicate great interest in regional/sub-regional cooperation of this kind.

45. The Seventh Asia-Pacific Workshop for the Promotion and Protection of Human Rights, held in

New Delhi (February, 1999), attended by representatives of 30 countries from the region and organized by OHCHR in cooperation with the Government of India, identified the following four key areas for the promotion and protection of human rights in this region: (i) the development of national plans of action for the promotion and protection of human rights and the strengthening of national capacities; (ii) human rights education; (iii) national institutions for the promotion and protection of human rights; and (iv) strategies for the realization of the right to development and ESC rights. The meeting held a discussion on ESC rights and subsequently recommended that the inter-sessional workshop on the right to development and ESC rights should focus, *inter alia*, on developing quantifiable benchmarks; identifying obstacles to the realization of these rights; and proposing relevant actions to strengthen national capacities for the promotion and protection of these rights.

Cooperation with civil society

46. Although international non-governmental organizations often focus on civil and political rights, in recent years NGOs have also taken an advocacy role in advancing the promotion and protection of ESC rights. NGOs such as OXFAM, the Centre for Economic and Social Rights, the Centre on Housing Rights and Evictions and Food First International Action Network are only some examples of the prominent organizations which have developed considerable expertise in this area. It is encouraging that an increasing number of local NGOs are also concentrating on ESC rights.

47. The Vienna Plus Five Global NGO Forum on Human Rights discussed at length problems relating to ESC rights and formulated a number of recommendations. The Forum stressed that these rights are not merely aspirational goals but have the same status, importance and significance for human dignity, development and well-being as civil and political rights. Attention was drawn to the negative impact of globalization on ESC rights and to the need for responses to this process.

48. OHCHR is cooperating with the International Commission of Jurists in order to accelerate the adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. In February 1999, OHCHR and ICJ organized a workshop on the draft Optional Protocol to the Covenant: more than 60 representatives of Permanent Missions to the UN in Geneva participated in an

informal discussion.

49. The Science and Human Rights Programme of the American Association for the Advancement of Science (AAAS) and Human Rights Information and Documentation Systems (HURIDOCs) have undertaken a three-year project on monitoring serious violations of ESC rights, as laid down in the ICESCR. Among its goals is the development of tools and resources to monitor such violations. The project will make extensive use of the Internet and World Wide Web to provide training and technical assistance.

Cooperation with the corporate sector

50. It is increasingly clear that many business decisions can profoundly affect the dignity and rights of individuals and communities. While global free trade and competition have enabled some countries to make dramatic gains in total national wealth, some others are becoming poorer or are struggling merely for modest gains. Of growing concern within countries, developed and developing alike, is the widening gap between rich and poor, even as total wealth increases. The causes of these developments are complex and varied, but they must be addressed. Business is at the heart of the ongoing globalization process and it is in the interest of business that the aforementioned problems be dealt with in a way which establishes that every individual has his or her place in the community and that all fundamental human rights are respected. Fortunately, many corporate leaders are recognizing that the long-term viability of their corporate activities and the future protection of shareholder value depend on a stable political environment governed by the rule of law based on human rights.

51. It was against this background that Secretary-General Kofi Annan proposed to world business leaders assembled at the Davos meeting of the World Economic Forum last January, a "Global Compact" of shared values and principles, to give a human face to the global market. He called on business leaders, through individual firms and business associations, to embrace and support a set of core values in the areas of human rights, labour standards and the environment. With regard to human rights in particular, the Secretary-General asked the business community to "support and respect the protection of international human rights within their sphere of influence; and to make sure their own corporations are not complicit in human rights abuses."

52. The immediate goal of the "Global Compact" is to incorporate universal values into the mission statements of the business community; to change management practices to implement these values; and to share learning experiences. The Secretary-General has asked the three United Nations agencies directly involved, ILO, UNEP and OHCHR to stand ready to assist business in this respect and to facilitate a dialogue between business and other social groups. A growing number of business associations, sectors and individual enterprises are already creating or revising statements of business principles and codes of conduct and undertaking industry-specific initiatives to enhance awareness of these issues and to monitor compliance with specific standards. These initiatives are encouraging examples of what can be done.

53. OHCHR is focusing on follow-up action to the Secretary-General's initiative in two areas. Firstly, OHCHR is establishing cooperative relationships with business associations such as Business for Social Responsibility, the Prince of Wales Business Leaders Forum, The World Business Council for Sustainable Development, and others, in an effort to encourage corporate initiatives. OHCHR is also involving trade unions and non-governmental organizations. Secondly, in light of the fact that it is Governments which are primarily responsible for the protection of human rights, OHCHR is exploring the question of international accountability for alleged corporate violations of human rights. The High Commissioner has asked the six human rights treaty bodies and the special rapporteurs and working groups to develop a mechanism for effectively promoting such accountability within their mandates.

54. The Commission on Human Rights and its Sub-Commission are also involved in discussing this issue. In resolution 1998/8, the Commission decided to establish a sessional working group of the Sub-Commission, for a three-year period, with a mandate to examine the effects of the working methods and activities of transnational corporations on the enjoyment of ESC rights and the right to development, as well as civil and political rights and to make recommendations in this respect. The working group will meet for the first time during the Sub-Commission's 1999 session. It is to be emphasized that the current session of the International Labour Conference adopted a new Convention against the Worst Forms of Child Labour.

VI. CONCLUSIONS

55. Making economic, social and cultural rights a reality remains a formidable challenge. This report has attempted to highlight developments at international level. Although the examples discussed in the report confirm that progress is being made in establishing and strengthening the mechanisms to promote and protect economic, social and cultural rights, results thus far achieved have, unfortunately, not had a significant impact on the lives of ordinary citizens. At the dawn of a new century, violations of economic, social and cultural rights must be perceived not only as an affront to human dignity but also as an unacceptable breach of the rule of law. Equally important, their implementation must be understood as an essential part of building a national economic and social order based on human security, freedom and equality.

56. Although economic, social and cultural rights are legally binding commitments entered into by Governments, the United Nations is increasingly able to assist national efforts aimed at fulfilling these obligations. The United Nations today not only undertakes the important work of following human rights policies and practices at national level but also provides practical support to Governments with the objective of building national capacities to implement economic, social and cultural rights. It is evident that such assistance must increasingly focus on helping Governments make informed policy and budgetary decisions which can enhance the enjoyment of these rights. This requires involvement of both human rights and the development programmes of the United Nations.

57. Yet despite the best efforts of States and the assistance provided by the United Nations human rights machinery, lasting progress in implementing economic, social and cultural rights cannot become a reality in the absence of wider international cooperation. The challenges faced by many countries are too great, and the resources available too limited, to believe otherwise. The United Nations Charter established the fundamental principle of joint action to ensure respect for human rights. Today, our challenge is to develop and support innovative approaches enabling tangible results. This will require the commitment and resources of all partners: Governments, international organizations, civil society and the corporate sector.

58. The United Nations should take the lead in developing further action for the further realization

of economic, social and cultural rights. Realistic but ambitious goals to be achieved in a reasonable time-frame need to be identified. The "Copenhagen+5" Review of the implementation of recommendations made by the 1995 Social Summit, as well as the coordinated follow-up to United Nations world conferences and summits could provide a framework for setting goals, outlining new approaches and developing supportive partnerships. The Economic and Social Council could play an important role in this endeavour. OHCHR will continue its efforts to contribute to real progress in the implementation of economic, social and cultural rights.

NOTES

- 1) See E.C.12/1999.4 and 5.

In its general comments, the Committee also clarified the content of the right to adequate housing (No. 4); the right to adequate housing in the context of forced evictions (No. 7); economic, social and cultural rights of persons with disabilities and of older persons (Nos. 5 and 6 respectively). The Committee also commented, *inter alia*, on the nature of States parties obligations (No. 3) and the domestic application of the International Covenant on Economic, Social and Cultural Rights (No. 9).

- 2) See General Comment No. 6 of the Human Rights Committee, *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40)*, annex V.

- 3) General Comment No. 1 (1989) of the Committee on Economic, Social and Cultural Rights, *Official Records of the Economic and Social Council, 1989, Supplement No. 4 (E/1989/22)*, annex III.

- 4) *Official Records of the Economic and Social Council, 1999, Supplement No. 6 (E/1999/26)*, chap. I.D, annex.

- 5) E.C.N.4/1999.49.

- 6) E.C.12/1991.1.

- 7) In April 1995, some Committee members visited Panama, and in September 1997, some members visited the Dominican Republic.

- 8) E/1999/L.19, para. 3.

- 9) E/1997/22, chap. VII.

- 10) Vienna Declaration and Programme of Action, A/CONF.157/24 (Part II), para. 75.

- 11) *Ibid.*, para. 98.

- 12) *Ibid.*, paras. 40-41.

- 13) General Comment No. 1 (1989) of the Covenant on Economic, Social and Cultural Rights, *Official Records of the Economic and Social Council, 1989, Supplement No. 4 (E/1989/22)*, annex III, para. 6.

- 14) General Comment No. 3 (1990) of the Covenant on Economic, Social and Cultural Rights, *Official Records of the Economic and Social Council, 1991, Supplement No. 3 (E/1991/23)*, annex III, para. 10.

- 15) *Official Records of the Economic and Social Council, 1995, Supplement No. 3 (E/1995/22)*.

- 16) See the reports entitled Coordination of the policies and activities of the specialized agencies and other bodies of the United Nations system related to the coordinated follow-up to and implementation of the Vienna Declaration and Programme of Action (E/1998/60); and Implementation of agreed conclusions 1998.2 of the Economic and Social Council on the coordinated follow-up to and implementation of the Vienna Declaration and Programme of Action (E/1999/83).

- 17) *Official Records of the General Assembly, Fifty-first Session, Supplement No. 3 (A/51/3 Rev.1)*, chap. III, para. 2, agreed conclusions 1996.1.

- 18) E.C.N.4/1999.48.

- 19) E.C.12/1999.5.

- 20) *Ibid.*, para. 14.

- 21) See also the report of the Secretary-General submitted to the Commission on Human Rights (E.C.N.4/1999.76).

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SUMMARY OF THE 55th SESSION OF THE COMMISSION ON HUMAN RIGHTS

(22 March - 30 April 1999)

The theme proposed by the Chairperson for the final session this century of the Commission on Human Rights, held in Geneva from 22 March to 30 April 1999, was "Taking responsibility". Under this banner, the Commission inaugurated and followed its new agenda of 21 items in numerical order, heard the statements of 37 dignitaries, an address by the Secretary-General on 7 April 1999, and 541 interventions by governmental delegations and 560 by representatives of non-governmental organizations (NGOs) during the general debate. The High Commissioner addressed the Commission weekly on the situation of human rights in Kosovo. Her last report, on 30 April 1999, had the added value of being officially submitted, by virtue of the mandate entrusted to her pursuant to Commission resolution 1999/2 inviting her to continue to monitor the situation, to gather and verify information and to report periodically to the Commission.

For the fourth time in its history, by acclamation, the Commission elected a distinguished woman, Ambassador Anne Anderson (Ireland) as Chairperson. She assumed her challenging task conscious that "women in countless numbers around the world are victims of human rights abuse, and women from every continent are among the staunchest of human rights defenders". Mr. Romans Baumanis (Latvia), Mr. Luis Alberto Padilla Menéndez (Guatemala) and Mr. Shambhu Ram Simkhada (Nepal) were elected Vice-Chairmen and Mr. Raouf Chatty (Tunisia) was elected Rapporteur.

Approximately 3,240 individuals representing the 53 States members of the Commission, 91 observer States, 35 United Nations bodies, specialized agencies and inter-governmental and other observer delegations, 23 national human rights institutions and 212 NGOs registered to participate. A total of 470 documents were issued for the fifty-fifth session of the Commission.

The Commission adopted 82 resolutions (58 by consensus and 24 by roll-call vote) and 13 decisions (12 by consensus and 1 by roll-call vote). Four statements were made by the Chairperson on behalf of the Commission, concerning: (a) human rights in Central America in the context of reconstruction and rehabilitation after hurricane Mitch; (b) the situation

of human rights in Colombia; (c) East Timor and (d) the review of the Commission's mechanisms.

The latter statement, made on 29 April 1999 following the withdrawal of two differing draft resolutions by their respective sponsors, calls for the establishment, under the agenda item entitled "Rationalization of the work of the Commission", of an inter-sessional open-ended working group on enhancing the effectiveness of the mechanisms of the Commission to continue the comprehensive examination of the report submitted by the Bureau of the fifty-fourth session of the Commission (E/CN.4/1999/104), as well as other contributions - particularly those submitted by the Asian Group and a group of countries calling themselves Like-Minded Countries. The new working group is to meet for up to 15 working days in total and report to the Commission at its fifty-sixth session, including recommendations for endorsement by the Commission. In the same statement, the Economic and Social Council is asked to approve the recommendation that the Sub-Commission on Prevention of Discrimination and Protection of Minorities be renamed "Sub-Commission on the Promotion and Protection of Human Rights". The Council is also requested to include in its resumed organizational session (usually in May) consideration of any proposals regarding special procedures mandates adopted at the annual session of the Commission.

"As long as I am Secretary-General", Mr. Kofi Annan said, "the United Nations as an institution will always place the human being at the centre of everything we do". In his statement before the Commission, the Secretary-General expressed the hope that the United Nations would be emboldened enough "to enter a new century with a renewed commitment to protecting the rights of every man, woman, child, regardless of ethnic, national or religious belonging". In this regard, the next challenge is undoubtedly the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to be held in the year 2001. Much attention was devoted at the fifty-fifth session of the Commission to the preparation of the World Conference. The sessional open-ended working

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group on the subject, under the very able leadership of Ambassador Absa Claude Diallo of Senegal, presented its report containing numerous proposals and recommendations (E/CN.4/1999/16) which will also be discussed by the Preparatory Committee of the World Conference at its first session, scheduled to be held from 1 to 5 May 2000. In its resolution 1999/78, the Commission recommended that the particular situation of children receive special attention and stressed the importance of systematically adopting a gender-based approach throughout the preparations for and in the recommendations of the World Conference.

As this year marks the tenth anniversary of the Convention on the Rights of the Child, a special segment was devoted to children's rights during the plenary meeting of the Commission on 14 April 1999, focusing on marginalization and exclusion. The Director General of ILO, Dr. Juan Somavia, as well as high-ranking representatives of WHO, UNICEF and the NGO Radda Barnen, were among the key speakers. The emergent practice of an annual meeting of interactive dialogue on a specific item seems to be widely supported and future themes may come from regional group suggestions.

The Chairperson adhered strictly to the working methods adopted by the Commission,

encouraged delegates to concentrate on substance and avoid unnecessary polemics, and interrupted NGO representatives who sought to deliver statements not relevant to the subject under discussion.

The Chair made a significant procedural ruling in relation to the right to raise a point of order, on 20 April 1999, relative to Palestine. In accordance with the advice of the Legal Office in New York, which relied on resolution 52/250 of the General Assembly and the accompanying note by the Secretary-General provided in document A/52/1002, the Chairperson ruled that the observer for Palestine had the right to raise a point of order in the Commission relating to Palestinian and Middle East issues, provided that the right to raise such a point of order did not include the right to challenge a decision by the Presiding Officer. The second aspect of her ruling related to the right of observer Governments to raise points of order. Contrary to the existing practice of the Commission, the Chairperson ruled that for the purposes of article 42.1 of the rules of procedure of the functional commissions of the Economic and Social Council, the term "a representative" was to be interpreted in the Commission as applying both to representatives of members of the Commission and those of States members of the United Nations not members of the

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Commission on Human Rights but participating in its work in an observer capacity. The Chairperson's ruling therefore gave to observer Governments the right to raise points of order at the Commission's fifty-fifth session. The United States delegation, however, recommended that the issue of according enhanced status to observers be reconsidered at the next session of the Commission.

For the first time in several years, the Commission moved a country, Sierra Leone, out of the confidential 1503 procedure for consideration in compliance with the public procedure under the agenda item entitled "Question of the violation of human rights and fundamental freedoms in any part of the world". The human rights situation in Sierra Leone became the subject of the first resolution adopted by the session (resolution 1999/1). Concerning Chad, the Commission also decided to conclude consideration of the human rights situation under the 1503 procedure and, at the same time, requested the High Commissioner for Human Rights to submit a progress report at its fifty-sixth session on the establishment and implementation of a technical cooperation project in that country (decision 1999/102). The mandate of the Special Rapporteur on the situation of human rights in Nigeria was terminated (1999/11) as was the mandate of the Special Rapporteur on Equatorial Guinea. However, in the latter case, the Commission decided to appoint a special representative of the Commission for one year to monitor the situation and report to the Commission at its fifty-sixth session (1999/19). All other mandates of special rapporteurs independent experts special representatives on country situations were renewed. Also, the delegations of the Sudan (1999/15), Rwanda (1999/20) and the Democratic Republic of the Congo (1999/56), members of the Commission, supported resolutions adopted without a vote regarding the human rights situation in their respective countries. Resolution 1999/8 on the human rights situation in Cuba was adopted by a roll-call vote of 21 votes to 20 with 12 abstentions. It calls upon the Government of Cuba to release all persons detained or imprisoned for peacefully expressing their political, religious and social views and for exercising their rights to full and equal participation in public affairs. A motion that the Commission take no decision on a draft resolution on the situation of human rights in China was carried by 22 votes to 17, with 14 abstentions.

In the thematic area, the most innovative decision of the Commission at its fifty-fifth session was that to appoint, for a three-year period, a special rapporteur on the human rights of migrants to examine ways and means of overcoming the obstacles and difficulties existing to the full and effective protection

of the human rights of this vulnerable group, with particular reference to the return of migrants who are non-documented or in an irregular situation. The Special Rapporteur, in carrying out his/her mandate, was requested to give careful consideration to the various recommendations of the working group of intergovernmental experts on the human rights of migrants, which is no longer operational.

The Commission reviewed reports and studies on a broad range of issues relative to the implementation of economic, social and cultural rights and the right to development. The High Commissioner was asked to consider the possibility of organizing a workshop to identify progressive developmental benchmarks and indicators relating to the right to education (1999/25), as well as a workshop with the objective of identifying the main elements of a possible draft declaration on human rights and extreme poverty (1999/26). The mandate of the independent expert on structural adjustment policies was extended for one year and a working group, scheduled to meet for two weeks, was requested to develop basic policy guidelines on structural adjustment programmes and economic, social and cultural rights which could serve as a basis for continuing dialogue between human rights bodies and the international financial institutions (1999/104).

The Commission again recommended that the Economic and Social Council and the General Assembly provide the Office of the United Nations High Commissioner for Human Rights with the means and resources necessary for carrying out its increased responsibilities and that they should also provide increased resources for the special rapporteurs (1999/54). Besides the renewal of the mandates of thematic rapporteurs, the Commission approved the appointment of Mr. Marc Bossuyt as Special Rapporteur of the Sub-Commission to undertake a study on the concept and practice of affirmative action (1999/107) and the extension of the mandates of two other experts of the Sub-Commission, Ms. H. Warzazi as Special Rapporteur on traditional practices affecting the health of women and the girl child (1999/80) and Ms. Gay McDougall as Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict, including internal armed conflict (1999/105).

An overwhelming majority agreed to the importance of promoting democratic governance (1999/57, adopted by a roll-call vote of 51 votes for and 2 abstentions). However, almost half of the members of the Commission did not support the resolution on

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of human rights" (1999/73, adopted by roll-call vote of 27 votes to 19, with 7 abstentions) because its text was politically controversial.

On the last day of the fifty-fifth session, resolution 1999/82 entitled "Defamation of religions" was adopted without a vote. It invites the High Commissioner, in the context of the preparations for the United Nations Year of Dialogue among Civilizations, to consider, *inter alia*, the holding of seminars to promote dialogue among cultures, thus contributing to the understanding of the universality of human rights.

In her closing statement, the Chairperson shared some of her impressions of the session. Addressing the **NGOs**, she said: "After six weeks in the chair my conviction is strengthened that, if the NGO voice is to continue to be heard loud and clear at the Commission, if it is not to be tuned out by Governments, we need to look at time management questions. In particular, the small minority of NGOs who are not respectful of the Commission's time - who make essentially the same speech under a wide

range of agenda items - must realize that this approach is deeply unfair to the majority of their NGO partners". To the **rapporteurs/independent experts**, she said: "One area where there is certainly room for improvement is the involvement of the rapporteurs in the work of the plenary. As Chair, I struggled hard throughout the session to maintain the primacy of the plenary and I believe strongly that this must be respected. I hope the ongoing work on review of mechanisms will improve the quality of dialogue with rapporteurs". To **Governments**, she said: "Much of the time, as I followed developments, I felt tremendously heartened by a real sense of common purpose built on universal standards. At other times, I asked myself what the point-scoring and brinkmanship had to do with the real world and the real causes we are here to serve".

The fifty-sixth session of the Commission will take place from 20 March to 28 April 2000.

Maria Francisca Ize-Charrin
Geneva, 11 June 1999

ABKHAZIA

THE UNITED NATIONS HUMAN RIGHTS OFFICE IN ABKHAZIA / GEORGIA (HROAG)

The UN Human Rights Office in Abkhazia, Georgia was established on 10 December 1996 following Security Council Resolution 1077 (1996) of 22 October 1996.

HROAG is located in the city of Sukhumi on the Black Sea.

The UN-led Human Rights Office in Sukhumi is a unique body : it is a first attempt to have a global organization - the UN, and a regional one - the OSCE, work together for the achievement of their common tasks in the field of human rights.

A Memorandum of Understanding was signed on 29 April 1997 between the then UN High Commissioner for Human Rights and the Organization for Security and Cooperation in Europe providing for the deployment of one member of the OSCE Mission to Georgia, experienced in human rights work, to HROAG. Under the terms of the Memorandum, staff provided by OSCE participate in carrying out the mandate of HROAG and work under the authority of the UN OHCHR, as represented by the Head of HROAG.

The Office forms part of the United Nations Observer Mission in Georgia (UNOMIG), under the authority of the Head of UNOMIG. Its costs are included in the UNOMIG budget. Based on the foregoing, the Office reports through the Head of UNOMIG to the UN OHCHR and to the Head of the OSCE Mission to Georgia.

HROAG's activities are based on its Programme which is set out at Annex I of the Secretary General's report to the Security Council concerning the situation in Abkhazia, Georgia of 15 April 1996 (S/1996/284).

HROAG's objectives as embodied in its programme are:

- a) Promoting respect for human rights;
- b) Protecting the human rights of the population of Abkhazia in the spirit of the Universal Declaration of Human Rights;
- c) Contributing to a safe and dignified return of refugees and internally displaced persons through improvement of the human rights situation;
- d) Reporting on human rights developments in conformity with UN and OSCE practices."

The Office has been striving to implement this rather ambitious and comprehensive set of objectives for the two years of its existence despite its recurrent staff and material resources constraints. The programme incorporates the Technical Cooperation Project for Georgia, as detailed below.

Since February 1999, the four international staff members of the Office include the UN head of the Office, and three human rights officers from the UN and OSCE.

The Implementation mechanisms for

Caucasian Mountains in Abkhazia, Georgia



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The UN team with member of the local population in Abkhazia, Georgia

HROAG's objectives as provided in the Programme of Activities are as follows:

Monitoring the human rights situation in Abkhazia, Georgia;

Establishing direct contact with the competent authorities in Abkhazia, Georgia and cooperating with them in taking measures to prevent and address human rights violations;

Providing technical assistance for strengthening local capacities to promote and protect human rights;

Development of human rights education material, skills and activities;

Contributing to the development of the human rights structures in civil society – examples include non-governmental organizations, grass-roots initiatives.

The staff of the office has organized seminars on human rights issues for schools including the militia school in Sukhumi. There are plans for the further development of such activities.

The Office maintains close contacts with the local NGOs in Abkhazia, Georgia, with the objective of lending support to their initiatives in the field of human rights and of strengthening emergent civil society structures. HROAG also maintains close contacts with international NGOs and UN agencies based in Sukhumi and Tbilisi : this facilitates the exchange of information, assistance to human rights-related projects and addressing individual cases falling within their competence.

In October 1997, a UN OHCHR Technical Cooperation Project Agreement was signed for Strengthening Capacities and Infrastructures for the Promotion and Protection of Human Rights in Georgia. This Project is an integral part of the HROAG

programme. Under the programme, proximately one third of the activities of the Georgia Project are scheduled to take place in Abkhazia, Georgia. The project is funded by the UN Voluntary Fund for Technical Cooperation.

The objectives of the project are:

Providing access to UN human rights information and capacity development in human rights for authorities and institutions of higher learning;

Capacity development of the legal community working in the area of the administration of justice;

Human rights capacity development for NGOs and the mass media to strengthen civil society.

These objectives are being achieved principally through training trainers in these three areas and then supporting further training by trained nationals. Teaching material is being developed and published in sufficient quantities for future use. Human rights depository libraries are being established and provided with specialized literature and material. The Project also provides for several human rights scholarships for the representatives of the legal community, NGOs and the mass media.

With the financial support of UNOMIG, the Office translated and published the International Bill of Human Rights in the Abkhaz language. The publication was devoted to the 50th Anniversary of the Universal Declaration of Human Rights and is HROAG's contribution to the implementation of the High Commissioner's initiative in having the Universal Declaration of Human Rights translated into a wide range of languages.

UNOMIG's financial support also facilitated publication of "The ABC's of Teaching Human Rights" in the Abkhaz language. The text will underpin the teaching of human rights in local

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Human Rights Expert Bill O'Neill on mission in 1997 in Georgia

primary schools.

The Office has concentrated its activities mainly on monitoring the human rights situation in Abkhazia. This is carried out through its city office which receives visitors with individual complaints. Another important aspect of the monitoring activity invites periodic visits by HROAG staff in the area along the cease-fire line where most of the grave human rights violations occur.

The city office handles allegations of violations and counsels the individual complainants. The Office has recourse to the competent authorities whenever their intervention is necessary in order to redress the violation.

Numerous factors underlie the human rights violations which derive primarily from the prevailing political and economic instability in the Abkhaz territory - a factor which runs counter to the establishment of the rule of law; the weak administration of justice and the difficulties the population faces in overcoming the consequences of the 1992-1993 armed conflict which was rooted in inter-ethnic relations. The allegations mainly concern violations of property rights, harassment of individuals by other individuals or by the authorities, often on the basis of ethnicity violations of the rights of some minority and religious groups and cases of forced labour.

When considered necessary, the office staff attend judicial proceedings. The situation in prisons and the treatment of prisoners are also matters of concern for the office.

The situation on the ground is complicated by the fact that the future political status of Abkhazia, Georgia is still the subject of negotiations. The

negotiations, conducted with the active participation of the UN, aim at a comprehensive political settlement of the conflict and include the political status of Abkhazia as well as respect for the sovereignty and territorial integrity of Georgia within its internationally recognized borders.

Now governed by de facto authorities, the republic is not recognized by the international community. It could not therefore be considered a party to human rights conventions, although in 1994 it adopted its own Constitution declaring that Abkhazia would abide by the Universal Declaration of Human Rights and the two International Covenants as well as the other universally recognized human rights instruments.

In the absence of a durable peaceful settlement of the Georgian-Abkhaz conflict, the situation, especially along the cease-fire line, remains tense and unstable. Despite the presence of CIS Peacekeeping Forces and the UN Military Observers in the area, the Cease-fire Agreement of 1994 is often violated by both parties, which leads to further degeneration of the human rights situation.

On the Georgian side of the cease-fire line some one hundred thousand IDPs are living, desperate to go back to their homes. Even more refugees and IDPs are spread around Georgia and neighbouring countries sustained by the hope of being able one day to return to their homes.

Since an agreement on the conditions of return of internally displaced persons is currently the subject of negotiations, the Office cannot fully implement that part of its programme concerning the establishment of a human rights environment conducive to

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Displaced Georgian woman from Abkhazia selling baskets near Kutaisi, Georgia

the safe and dignified return of the IDPs. Despite this fact, the Office is monitoring the human rights situation attendant on the spontaneous movement of IDPs crossing the cease-fire line to their places of residence in Abkhazia and is addressing the cases of human rights violations there.

The continuing unstable and insecure situation along the cease-fire line is the source of the suffering and serious human rights violations and abuses being experienced by the civilian population. As access to the area is restricted for both security reasons and the danger posed by mines, the regular visits of HROAG staff into the conflict zone are possible only by joining the UN Military Observers' patrols there. The UN Military Observers' patrols are conducted only by two mine-protected vehicles or by a helicopter : this ensures the relative safety of UNOMIG personnel and is now the only means of access to people in this district. Staff are consequently circumscribed in their efforts to gather information. It is difficult, in the circumstances, to provide the local people willing to communicate what they know and feel with the level of confidentiality called for. During visits to the area, many people gather around the UN vehicles and among them there are often representatives of the local authorities and the militia.

UNOMIG assistance is indispensable to the Office in the carrying out of its activities. UN Military Observers' patrols are usually the first and only reliable source of information for HROAG of the human rights situation in the conflict zone along the cease fire line. Being part of the UNOMIG structure

has its advantages, but sometimes creates difficulties in providing the necessary confidentiality in the process of collecting information, as mentioned above.

It should also be noted that, as part of UNOMIG, HROAG's human rights policy has to be consistent with the impartial role of the UN as mediator in the settlement of the Georgian-Abkhaz conflict. This also poses certain challenges to the activities of HROAG. In carrying out its monitoring mandate, it has to reflect the UNOMIG policy of conflict resolution. This is even more complicated by the fact that the Office's mandate is limited to Abkhazia, Georgia.

It is extremely important to carry out this complex approach to the human rights work on the ground if we are to reduce the causes of such conflicts in the future. Undoubtedly, the improved respect of human rights would also have a positive influence on the ongoing process of finding a peaceful solution to the conflict.

Lilia Zaharieva

Head of the OHCHR
Human Rights Office in
Abkhazia, Georgia
(HROAG)

ACT PROJECT

ACT Project brings human rights "close to home..."

If you ever doubted the truth of Eleanor Roosevelt's conviction that "human rights begin in small places, close to home..." you need only consider some of the activities which have been undertaken recently by individuals, community groups and grass-roots non-governmental organizations with the help of grants from the ACT Project (Assisting Communities Together) - a new joint initiative of the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Development Programme (UNDP).

The ACT Project was launched in 1998 as a practical contribution to the commemoration of the 50th Anniversary of the Universal Declaration of Human Rights. It focuses on a "bottom up approach" by emphasizing the role which civil society plays in the promotion and protection of human rights. The long-term objectives of the ACT Project are to empower people at the local level to be pro-active in ensuring greater respect for human rights and to strengthen partnerships between the United Nations and local human rights constituencies. The project supports institutions and NGOs, as well as individuals undertaking human rights initiatives by providing micro-grants of up to US\$2,000.

In the pilot phase of the ACT Project, over 300 completed applications proposing activities for ACT Project funding were returned to OHCHR through selected UNDP Resident Representatives and OHCHR field offices who provided written comments and recommendations for each application submitted through their respective offices. 69 grants totalling approximately US\$130,000 from voluntary funds for the 50th anniversary were awarded in 24 countries in the pilot phase of the project.

Pilot Phase Projects

The pilot phase has confirmed that the ACT Project is a suitable tool not only in assisting human rights organizations already active at the local level but also for encouraging others to launch ideas and projects. It has also shown that individuals, groups and non-governmental organizations at the local level, particularly in developing and transition countries, can be effectively assisted through relatively modest grants. The large number of applications submitted is indicative of the high level of interest demonstrated both by civil society and UN partners: a clear indication has emerged of their joint willing-

ness to cooperate with OHCHR in implementing the project. We can therefore conclude that the ACT project continues to respond to existing needs. Below are just a few examples of activities which grant recipients implemented during the pilot phase:

- In Nepal, Mr. Rohit Kumar Gurung from Okhaldhunga district visited 15 high schools personally between October and December 1998 in this very remote district to teach courses both to senior students and teachers on various aspects of human rights focusing on women, children and oppressed social groups. Mr. Gurung travelled extensively on foot (this district has no access to roads or electricity) to each of the schools, held a major district - level workshop mobilizing key district - level bureaucrats, NGO leaders and the public, and organized numerous ad hoc awareness meetings in market places. UNDP Nepal has pointed out that "the idea of granting small amounts of funds to small village-based organisations/ individuals generated great impact at the grassroots level. An initiative with larger awards with more stringent application requirements could have prevented genuine grassroots-based organisations, such as the ones we selected, from passing the rigours of application and being successful in winning the awards. ...Hence ACT has demonstrated in our case that small and flexibly-designed grants work better for genuine village-based NGOs; they have also proved to be the best agents for generating maximum impact in remote villages, bringing into use unconventional assets like social capital."
- In Burundi, Mr. Arcade Bacanamwo translated the UDHR into the Kirundi language and distributed copies among women living in camps for displaced persons. Audio cassettes of the UDHR were also produced and distributed and a series of human rights discussions was organized in the camps in which approximately 200 women participated. The UNDP Resident Representative in Burundi noted that "...the value of the ACT Project in Burundi is the possibility it offers to find small, community-based initiatives that would not otherwise qualify for

ACT PROJECT



Distributing Human Rights Information in Malawi

support. The opportunity for OHCHR and UNDP to co-sponsor the grants is also useful, as it helps to underline the links between our two organizations."

- In the Dominican Republic, "Amigos Siempre Amigos" organized a discussion forum and workshop on the human rights of people living with HIV/AIDS. UNAIDS also provided resources for the event which was attended by 78 participants, including local human rights and HIV/AIDS NGOs, government officials and individuals living with HIV. A committee was subsequently formed to collect information on cases of human rights violations of people living with HIV/AIDS in that country.
- In El Salvador, the "Comité de familiares de víctimas de las violaciones de los derechos humanos de El Salvador" (CODEFAM) held a conference entitled "Encuentro de Promotores Comunes" for 120 human rights defenders/promoters from 30 communities. The participants shared their experi-

ences and discussed plans for coordinating their efforts more effectively in the future. A guide for human rights defenders is also being developed based on the findings of the conference.

- In Georgia, the NGO "Former Political Prisoners for Human Rights" organized seminars once a week between November and December at which human rights violations were discussed and presented. The meetings were also attended by representatives of law-enforcement bodies. As a result of the seminars, a bulletin was produced entitled "Civil Control over Law-Enforcement Bodies: Problems, Perspectives, International Experience". As UNDP Georgia stated "...such small funded projects are very flexible and effective; they raise the overall image and capacity of the national NGOs, as well as their participation in social and political life of the country..."
- In the multi-ethnic village of Dupjacani, Macedonia, an elementary school estab-

ACT PROJECT

lished a "human rights corner" with various human rights publications and books. Activities such as an essay contest on the rights of the child were also organized. The OHCHR Office in Macedonia remarked that "...the response to these human rights activities was overwhelming. The interest and the awareness of human rights raised among the children as well as among the school's teachers was enormous and positive."

- Also in Nepal, the "Village Women Consciousness Centre" organized 18 one-day workshops on Children's Rights, Entitlements and Welfare in each of the 18 remote villages in northern Sindhuli. According to the UNDP Resident Representative report: "the workshops were followed by the formation of 11 member Child Concern Group in each of the 18 villages for follow-up and institutional purposes. Over 930 participants took part in this intensive one-month long series of workshops."

- In Uruguay, the Instituto de Investigación y Desarrollo Social (IDES) organized a seminar on human rights and health. 120 participants, mainly in the social service and health fields took part in the event. The seminar addressed discrimination in access to health care, particularly for people living with HIV/AIDS and homeless children. The participation of local media helped to convey to the wider public that "health is a right for everybody." The recipient plans to publish a short publication outlining the proposals developed during the seminar as well as descriptions of violations of the right to health.

- In Jordan, the Mizan Law Group for Human Rights organized a workshop entitled "Child labour - the actual reasons and solution as seen by working children". Participants included 74 children and 36 adults. UNDP Jordan reports that the workshop was well received and attended by the Government Minister for social development who made a commitment to establish a mechanism to finance schooling and pocket money for out-of-school child workers in Jordan. Mizan has since established a committee, "Children for Children's Rights", to ensure that applicants for financial assistance will receive help in completing relevant information. As the UNDP Jordan programme officer put it, "It

is striking to see how much you can do with little money! You give it to the right, enthusiastic people on the ground and they make wonders with it! I believe that very little seed money might often be exactly what it takes to move an idea from utopia to real action."

Moving forward

In addition to the achievements of the pilot phase, a number of important lessons were learned which should make the second phase of the project currently being launched a greater success thanks to a contribution by the United Nations Foundation. In the second phase, increased responsibility for the selection of grant recipients, financial administration of grants and evaluation of activities will be given to UN partners at country level. This should strengthen cooperation between beneficiaries and their country level United Nations counterparts as well as empower the UN structures on the ground. Greater efforts will also be made to enable closer cooperation between UNDP Resident Representatives and OHCHR field offices in implementing the ACT Project at country level.

Governments have also welcomed the creation of the ACT Project and have encouraged OHCHR to continue its development. At the 55th session of the Commission on Human Rights, the resolution adopted concerning the United Nations Decade for Human Rights Education welcomed the initiative to develop the project and requested the High Commissioner to continue implementation of the ACT Project as a means of supporting human rights education activities undertaken by non-governmental organizations.

This support, in addition to the positive experience gained in the pilot phase, confirms that the ACT Project has been a timely initiative which can be widely replicated and serve as an important complement to institution or human rights capacity-building at national level. Perhaps the most important factor in the long term is that the ACT Project empowers people "in small places, close to home..." to take action in promoting human rights in partnership with the United Nations human rights programme.

Scott Jerbi
20/05/99

POPULATION TRANSFERS

Population transfers and the UN Sub-Commission on Promotion and Protection of Human Rights

The phenomenon of ethnic cleansing in Kosovo and in the former Yugoslavia is not the first manifestation of forced population transfers in this century of involuntary migrations. "Ethnic cleansing" is but a new term to describe the old State practice of expelling minorities on racial or religious grounds. This practice has been repeatedly condemned in recent decades in numerous resolutions of the Security Council, the General Assembly and the Commission on Human Rights.

In this context, the United Nations Sub-Commission on Promotion and Protection of Human Rights (formerly the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities) has played an important role by undertaking studies that have shaped the thinking of policy-makers and contributed not only to progressive standard-setting but also to the development of monitoring mechanisms and preventive strategies. Following the 1977 Sub-Commission Study by Francesco Capotorti on *The Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*¹, a working group was set up to draft the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities², which was adopted by the General Assembly in 1992 and led to the establishment of the Sub-Commission's Working Group on Minorities.

True to its mandate, the Sub-Commission designated in 1992 two of its members, Mr. Awn Shawkat Al-Khasawneh (Jordan) and Mr. Ribot Hatano (Japan), as Special Rapporteurs, entrusting

them with a study on the human rights dimensions of population transfers, including the implantation of settlers³. In their preliminary report (E/CN.4/Sub.2/1993/17 and Corr.1), Al-Khasawneh and Hatano found that forced population transfers were *prima facie* unlawful and violated important provisions of humanitarian law and human rights law *vis à vis* both the transferred and the receiving populations. A progress report was submitted by Mr. Al-Khasawneh in 1994 (E/CN.4/Sub.2/1994/18 and Corr.1), which was followed by an expert seminar held in Geneva in February 1997 with a view to assisting the Rapporteur in preparing his final report. In August 1997, Al-Khasawneh presented his final report to the forty-ninth session of the Sub-Commission (E/CN.4/Sub.2/1997/23 and Corr.1), making reference to John Keats' *Ode to a Nightingale* and to the fate of the homeless since time immemorial, recalling Ruth as she stood "in tears amid the alien corn". In this report Al-Khasawneh affirms the fundamental human right to live and remain in one's homeland as a prerequisite to the enjoyment of other rights. Reference is made to the statement of the first United Nations High Commissioner for Human Rights, Mr. José Ayala Lasso, on 28 May 1995, that "the right not to be expelled from one's homeland is a fundamental human right", thus rejecting collective expulsions and "collective punishment on the basis of general discrimination."⁴

The report observes that "collective expulsions or population transfers usually target national, ethnic, religious or linguistic minorities and thus, *prima facie*, violate individual as well as

*Refugees in Bosnia, Krajina /
Serbs from the Banja Luka area*



POPULATION TRANSFERS



Croatia - refugees from Krujina crossing the Sava River at Davor

collective rights enunciated in several important international human rights instruments, in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child ... Specific rights which population transfers violate include the right to self-determination, the right to privacy, family life and home, the prohibition on forced labour, the right to work, the prohibition of arbitrary detention, including internment prior to expulsion, the right to nationality as well as the right of a child to a nationality, the right to property or peaceful enjoyment of possessions, the right to social security, and protection from incitement to racial hatred or religious intolerance.”

In its conclusions, Al-Khasawneh underlines that forced population transfers not only violate international law but also engage State responsibility and the criminal liability of individuals.”

The report annexes a “Draft Declaration on Population Transfer and the Implantation of Settlers”, which, like the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, should one day be adopted by the General Assembly. Al-Khasawneh’s draft declaration has enormous relevance not only to ethnic cleansing but also to the phenomenon of internal displacement. It is worth quoting several of its provisions:

Art. 4 stipulates that: “1. Every person has the right to remain in peace, security and dignity in one’s home, or on one’s land and in one’s country. 2. No person shall be compelled to leave his place of residence. 3. The displacement of the population or part thereof shall not be ordered, induced or carried out unless their safety or imperative military reasons so demand. All persons thus displaced shall be

allowed to return to their homes, lands, or places of origin immediately upon cessation of the conditions which made their displacement imperative.”

In order to forestall attempts to circumvent the human rights of populations threatened by mass expulsion, Article 7 stipulates: “Population transfers or exchanges of population cannot be legalized by international agreement when they violate fundamental human rights norms or peremptory norms of international law.”

Article 8 sets forth the remedies available to victims: “Every person has the right to return voluntarily, and in safety and dignity, to the country of origin and, within it, to the place of origin or choice. The exercise of the right to return does not preclude the victim’s right to adequate remedies, including restoration of properties of which they were deprived in connection with or as a result of population transfers, compensation for any property that cannot be restored to them, and any other reparations provided for in international Law.”

Article 10 places certain obligations on all States: “Where acts or omissions prohibited in the present Declaration are committed, the international community as a whole and individual States, are under an obligation: (a) not to recognize as legal the situation created by such acts; (b) in ongoing situations, to ensure the immediate cessation of the act and the reversal of the harmful consequences; (c) not to render aid, assistance or support, financial or otherwise, to the State which has committed or is committing such act in the maintaining or strengthening of the situation created by such act.”

Not surprisingly, this draft declaration has been frequently quoted by the political leadership of many countries as well as in academic circles. Whilst it undoubtedly constitutes an important step forward in standard-setting, it is, however, “soft law”.

POPULATION TRANSFERS

Conceivably, "hard law" in the form of a Protocol on the Right to One's Homeland could be added to the International Covenant on Civil and Political Rights, or a Convention on the Prevention and Punishment of the Crime of Mass Expulsion could be negotiated and adopted by the General Assembly. But no declaration, protocol or convention can effectively stop the occurrence of ethnic cleansing, unless preventive strategies are developed and effective implementation machinery is in place.

In his final report, Al-Khasawneh makes the interesting recommendation that "The Sub-Commission should consider establishing a working group to monitor compliance with the declaration, in particular by developing early-warning and preventive mechanisms and coordinating advisory services and technical assistance, as required."⁷

Al-Khasawneh's report was subsequently endorsed by the Commission on Human Rights and by the Economic and Social Council. Furthermore, by resolution 1998/26, the Sub-Commission decided to continue considering "the issue of return to place of residence and housing for refugees and internally displaced persons"; by resolution 1999/47 the Commission on Human Rights encouraged the Sub-Commission in this work; in this connection, during its fifty-first session in August 1999 the Sub-Commission adopted decision 1999/108 on "Housing and property restitution in the context of the return of refugees and internally displaced persons." An expert seminar is to take place in late 1999 or early 2000 with a view to exploring the possibilities of implementing Al-Khasawneh's recommendations.

It is interesting to note that the International Law Commission, in its Draft Code on Crimes Against the Peace and Security of Mankind, lists deportation or forcible transfer of population as a "crime against humanity" under article 18 and as a "war crime" under article 20. The ILC commentary observes "that a crime of this nature could be committed not only in time of armed conflict but also in time of peace ... [Deportation] implies expulsion from the national territory, whereas the forcible transfer of population could occur wholly within the frontiers of one and the same State ... Transfers of population under the draft article meant transfers intended, for instance, to alter a territory's demographic composition for political, racial, religious or other reasons, or transfers made in an attempt to uproot a people from their ancestral lands. One member of the Commission was of the view that this crime could also come under the heading of

genocide."⁸ The ILC commentary further observes that "establishing settlers in an occupied territory constitutes a particularly serious misuse of power, especially since such an act could involve the disguised intent to annex the occupied territory. Changes to the demographic composition of an occupied territory seemed to the Commission to be such a serious act that it could echo the seriousness of genocide."⁹

In the Statute of the International Criminal Court, adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, the States parties to the Statute agreed that "deportation or forcible transfer of population" constitutes crimes against humanity under article 7, and that "unlawful deportation or transfer" constitutes war crimes under article 8.¹⁰

The International Criminal Tribunal for the Former Yugoslavia has already indicted the former Serb leader Radovan Karadzic and the Bosnian Serb military commander Ratko Mladic on several counts of genocide and crimes against humanity. Paragraph 19 of the indictment charges them with the "unlawful deportation and transfer of civilians". Paragraph 25 specifically charges: "Thousands of Bosnian Muslims and Bosnian Croats from the areas of Vlasenica, Prijedor, Bosanski Samac, Brcko and Foca, among others, were systematically arrested and interned in detention facilities established and maintained by the Bosnian Serb military, police and their agents and thereafter unlawfully deported or transferred to locations inside and outside the Republic of Bosnia and Herzegovina. In addition, Bosnian Muslim and Bosnian Croat civilians, including women, children and elderly persons, were taken directly from their homes and eventually used in prisoner exchanges by Bosnian Serb military and police and their agents under the control and direction of Radovan Karadzic and Ratko Mladic. These deportations and others were not conducted as evacuations for safety, military necessity or for any other lawful purpose and have, in conjunction with other actions directed against Bosnian Muslim and Bosnian Croat civilians, resulted in a significant reduction or elimination of Bosnian Muslims and Bosnian Croats in certain occupied regions."¹¹

Admittedly, neither Karadzic nor Mladic has as yet been arrested and brought before the Tribunal. But it is abundantly clear that the offence of forcible population transfers is perceived by the international community as an international crime

POPULATION TRANSFERS

Arrival in Blace area



for which political and military leaders are liable and for which there should be no impunity. The indictment, on 27 May 1999, of the President of Yugoslavia, Slobodan Milosevic, for crimes committed in Kosovo, underlines this point.

On the matter of remedies for the victims, the Dayton Accords have provided in annex VII for the right to return of the refugees to their places of origin. Unfortunately, there has been only partial implementation of this section of the Dayton Accords. On the other hand, the return of the ethnic Albanians to their homes in Kosovo gives hope to refugees and expellees the world over.

Regional supranational jurisprudence also provides some hope for victims. With regard to the "forcible evictions from home and land" of "about 200,000"¹² Greek Cypriots and their displacement from Northern Cyprus to Southern Cyprus, the European Commission on Human Rights found, on 10 July 1976, "that the evictions of Greek Cypriots from houses, including their own homes, which are imputable to Turkey under the Convention, amount to an interference with rights guaranteed under Article 8(1) of the Convention, namely the right of these persons to respect for their home, and/or their right to respect for private life. The Commission further considers that the transportation of Greek Cypriots to other places, in particular the forcible incursions into the territory controlled by the Turkish army, and the deportation of Greek Cypriots to the demarcation line ... constitute an interference with their private life ... which cannot be justified on any ground under para. 2 of article 8."¹³ The Commission considered "that the prevention of the physical possibility of the return of Greek Cypriot refugees to their homes in the north of Cyprus amounts to an infringement, imputable to Turkey, of their right to respect of their homes as guaranteed in article 8(1)"¹⁴. Furthermore the Commission noted that the acts violating the Convention were directed exclusively against members of the Greek Cypriot community and concluded that Turkey had failed to secure the rights and freedoms set forth in the Convention without discrimination on the grounds of ethnic

origin, race and religion as required by article 14 of the Convention.¹⁵

Even more significant is the Judgment of the European Court of Human Rights of 18 December 1996 in the *Loizidou v. Turkey* case, in which the Court held that the right to property of Mrs. Loizidou, a displaced person from Northern Cyprus, had been violated and, in a further judgment of 28 July 1998, ordered restitution.

These decisions and judgments further illustrate that forced population transfers are illegal and that the violation of the right to one's homeland is justiciable.

As already noted in the study of Special Rapporteur Al- Khasawneh, the norms and the jurisprudence on the illegality of forced population transfers are consistent. It has now become an imperative to introduce the machinery for ensuring compliance with these norms, to prevent future outbreaks of "ethnic cleansing" and for making effective remedies available to the victims. A clearly demonstrated political will on the part of the international community is a pre-requisite for translating law into action and for eradicating the phenomenon of forced population transfers.

Alfred de Zayas
1 September 1999

¹ UNP Sales No. E. 91.XIV.2.

² GA Res. 47/135, U.N. GAOR, 47th Session, Supp. No. 49, at 210, U.N. Doc. A/47/49 (1992).

³ Resolution 1992/28 of 27 August 1992.

⁴ E.C.N. 4 Sub.2/1997/23, para. 12.

⁵ *Ibid.*, paras. 14 and 15.

⁶ *Ibid.*, para. 65.

⁷ *Ibid.*, para. 72.

⁸ Draft Code of Crimes against the Peace and Security of Mankind, Report of the International Law Commission on Its Forty-third Session, U.N. GAOR, 46th session Supp. No. 10, at 268.

⁹ *Ibid.*, para. 271.

¹⁰ Rome Statute for the International Criminal Court (A/Conf.183/9, 1998). See also M. Cherif Bassiouni (ed.), *The Statute of the International Criminal Court. A Documentary History*, Transnational Publishers, 1998, pp. 41f.

¹¹ Prosecutor v. Karadzic Case No. IT-95-5-I (ICTY 25 July 1995).

¹² *Cyprus v. Turkey*, Applications Nos. 6780/74 and 6950/75, decision on admissibility, Yearbook of the European Commission on Human Rights, vol. 18, pp. 82 et seq., at 90.

¹³ *Cyprus v. Turkey*, Applications Nos. 6780/74 and 6950/75, Report of 10 July 1976, para 209, pp. 72-73. See also Application No. 8007/77, Report of 4 October 1983.

¹⁴ *Ibid.*, para. 208, p. 72.

¹⁵ In 1983, the European Commission again dealt with the issue and found that the displacement of persons, separation of families and discrimination violated the European Convention. See Christa Meindersma, "Population Transfers in Conflict Situations", in *Netherlands International Law Review*, 1994, pp. 31-83 at 71-72.

EXHIBITIONS

Exposition "La pauvreté dans le monde : la poésie et l'espoir".

20 juillet - 6 août 1999

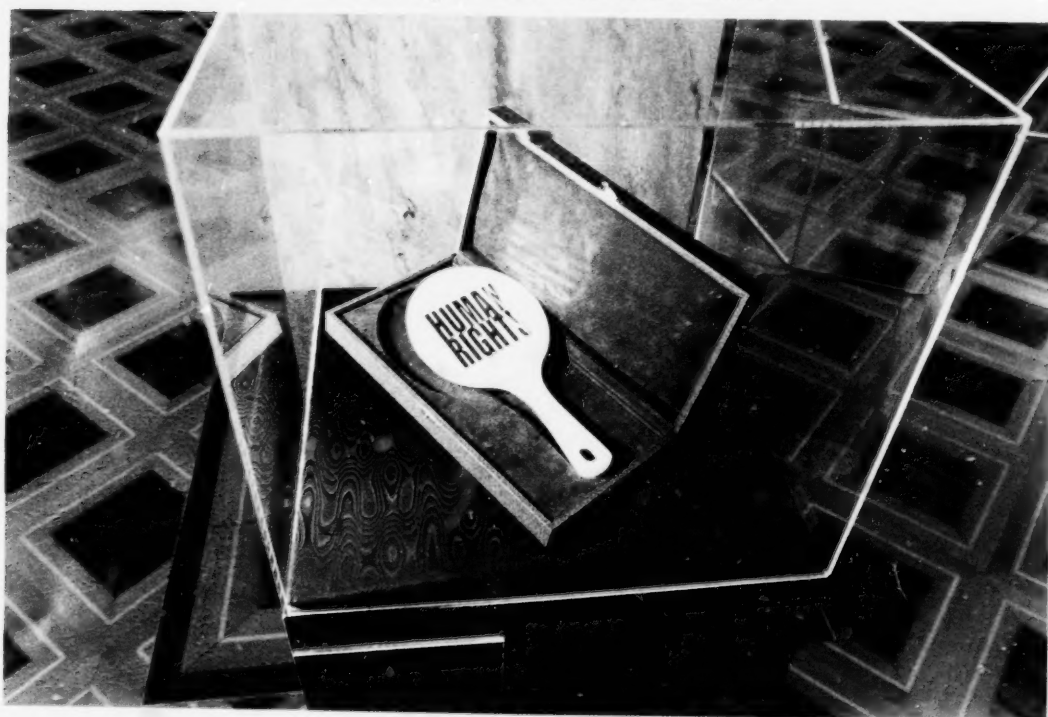
"Méditation d'hiver" Trento Longaretti



Exposition "Droits de l'Homme, Regards d'artistes"

26 avril - 16 mai 1999

"Human Rights 1999" Hervé Graumann



WEBSITE

Since its opening, the United Nations Human Rights website has been visited by people from 123 countries worldwide. In the first half of 1999, the website has had an average of approximately 20000 user sessions per week; each session lasts 12 minutes on average. This constitutes an increase in sessions of more than 600% in comparison to 1997.

These numbers prove the success of the project, encourage us to meet expecta-

tions and reinforce our commitment to work for its continuing maintenance, improvement and updating. In the context of this continuing commitment, your comments and/or suggestions play a pivotal role.

The special E-mail address:
webadmin.hchr@unog.ch

which appears at the bottom of all our site menus has been created for this purpose.

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Depuis son ouverture, le site du Haut Commissariat pour les Droits de l'Homme en anglais a été visité en moyenne par 20000 utilisateurs par semaine, originaires de quelques 123 pays différents. La durée moyenne des sessions pour le premier semestre 1999 a été de 12 minutes, ce qui constitue un accroissement des sessions de plus de 600% par rapport à 1997.

Ces chiffres démontrent le succès du projet et nous encourageant à renforcer

notre engagement, et à accentuer nos efforts pour son amélioration et sa mise à jour.

Vos commentaires et suggestions jouent un rôle important. Dans ce but, nous avons créé spécialement une adresse électronique:

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où nous attendons vos remarques.

Calendar / Calendrier*

September – December 1999 / septembre - décembre 1999

* In Geneva unless otherwise specified / à Genève, sauf contre-indication

Working Group on Arbitrary Detention	13-17 Sept./sept.	Groupe de travail sur la détention arbitraire
Working Group on the Right to Development	13-17 Sept./sept.	Groupe de travail sur le Droit au Développement
Working Group, Committee on the Rights of the Child	13-17 Sept./sept.	Groupe de travail du Comité des droits de l'enfant
Committee on the Rights of the Child	20 Sept./sept 8 Oct./oct.	Comité des droits de l'enfant
Tenth Anniversary of the Convention on the Rights of the Child	20 Sept./sept 1 Oct./oct.	Dixième anniversaire de la Convention sur les droits de l'enfant
Working Group on enhancing the mechanisms of the Commission on Human Rights	27 Sept./sept 1 Oct./oct.	Groupe de travail sur le renforcement des mécanismes de la Commission des droits de l'homme
Working Group on the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	4-15 Oct./oct.	Groupe de travail chargé d'examiner le projet de protocole facultatif se rapportant à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants
Working Group, Human Rights Committee	11-15 Oct./oct.	Groupe de travail du Comité des droits de l'homme
Working Group on the draft Declaration of Indigenous Peoples	11-15 Oct./oct.	Groupe de travail sur le "Projet de Déclaration des droits des populations autochtones"
Human Rights Committee	18 Oct./oct 5 Nov./nov.	Comité des droits de l'homme
Committee against Torture	8-19 Nov./nov.	Comité contre la Torture
Working Group on Structural Adjustment	22 Nov./nov 3 Dec./déc.	Groupe de travail sur l'ajustement structurel
Meeting of the States parties to the Convention against Torture	24 Nov./nov.	Réunion des Etats parties à la Convention contre la torture
Board of Trustees of the Voluntary Fund for Technical Cooperation in the Field of Human Rights	24 Nov./nov.	Conseil d'administration du fonds de contributions volontaires pour la coopération technique dans le domaine des droits de l'homme
Committee on Economic, Social and Cultural Rights	15 Nov./nov. 3 Dec./déc.	Comité des droits économiques, sociaux et culturels
Working Group on Arbitrary Detention	24 Nov./nov. 3 Dec./déc.	Groupe de travail sur la détention arbitraire
Working Group on Enforced or Involuntary Disappearances	24 Nov./nov 3 Dec./déc.	Groupe de travail sur les disparitions forcées ou involontaires
Working Group, Committee on Economic, Social and Cultural Rights	6-10 Dec./déc.	Groupe de travail du Comité des droits économiques, sociaux et culturels
Working Group on enhancing the mechanisms of the Commission on Human Rights	6-10 Dec./déc.	Groupe de travail